

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALISON J. NOHARA and PATTI J. SYZDEL,
individually and as representatives of a class of
participants and beneficiaries on behalf of the
Prevea Clinic, Inc. 401(k) and Retirement Plan,

Plaintiffs,

v.

Case No. 20-C-1079

PREVEA CLINIC, INC., et al.,

Defendants.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On July 21, 2023, Magistrate Judge Stephen C. Dries recommended that I deny Defendants' motion to dismiss Plaintiffs' third amended complaint. Defendants filed objections to the Report and Recommendation on August 4, 2023. After careful consideration of the Report and Recommendation, Defendants' objections, and the record as a whole, the court adopts the Report and Recommendation of the Magistrate Judge in its entirety. In recommending that the motion to dismiss be denied, the Magistrate Judge acknowledged that it was a close case. He recognized that the comparator plans Plaintiffs presented and the method used to arrive at what a reasonable recordkeeping and administrative (RKA) fee would be was suspect. But the court agrees that the difference in the RKA fees paid by the comparator plans and the Prevea plan is significant enough that it supports an inference, however slight, that the plan participants did not receive services justifying the high RKA fees they paid. Accordingly, Plaintiffs have stated a claim, at least at this stage, for breach of the duty of prudence. And because Plaintiffs' breach of the duty to monitor claim is derivative of the breach of fiduciary duty claim, Plaintiffs may also pursue their breach of the duty to monitor claim.

IT IS THEREFORE ORDERED that Magistrate Judge Dries' Report and Recommendation (Dkt. No. 96) is **ADOPTED**.

IT IS FURTHER ORDERED that, for the reasons stated in the Report and Recommendation, Defendants' motion to dismiss Plaintiffs' third amended complaint (Dkt. No. 79) is **DENIED**.

The Clerk is directed to set the matter on the court's calendar for a Rule 16 telephonic scheduling conference.

Dated at Green Bay, Wisconsin this 22nd day of January, 2024.

s/ William C. Griesbach
William C. Griesbach
United States District Judge